IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1235 OF 2004

Smt. Tulsabai Genu Gangurde ... Appellant

V/s

Punja Barku Nikam & ors. ... Respondents

Shri V.Z. Kankaria for the appellant.

Shri A.G. Kundekar for respondents.

CORAM: P.V. KAKADE, J.

DATED: 8TH DEC., 2004.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Ad-hoc Additional District Judge, Nasik allowing the appeal by order dated 1.10.2004 and setting aside the order and partly decreeing the suit for perpetual injunction passed by the Civil Judge, Jr. Divn., Dindori, Dist. Nasik, dated 28/3/2002.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs have filed the suit for perpetual

injunction against the defendants on the ground that the suit property was owned by the defendants and it was their ancestral property. The property admeasuring 1 hectre 20 Ares is Gat No.213, was cultivated by the plaintiff since the father of defendants on Batai basis as of tenant and since then, from the year 1942, the plaintiff is in possession of the suit land as a tenant. The defendant was obstructing her possession and hence the suit came to be filed for perpetual injunction and consequential damages against the defendant.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved her possession in the suit property and, therefore, passed decree for injunction against the defendant.

5. The appeal was carried to the District Court. The learned Addl. District Judge heard and decided the appeal on merits and came to the conclusion that the appeal deserves to be allowed and the lower Court’s order of perpetual injunction against the defendant was required to be set aside and consequently the appeal came to be allowed. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It is evident from the record that the plaintiff was claiming her lawful possession over the suit property as the tenant of the property. However, it is revealed from the record that she filed an application under Sec.32-G of the B.T. & A.L. Act for declaring herself as a tenant of the suit property. The case was adjudicated and it was held that she was not tenant of the suit land. She preferred an appeal before the competent authority which was dismissed in the year 1997. It was further challenged before the Maharashtra Revenue Tribunal, Mumbai and the matter was remanded to S.D.O. Nasik. However, in that proceeding, the case was dismissed on 31.5.2001. Against that, the plaintiff preferred revision which too was dismissed. Said order was challenged in Writ Petition No. 6018 of 2001 in this Court and this Court also confirmed the order of the lower Court and did not interfere in the said order. So also it was ultimately decided that she was not the tenant of the suit property.

Once it was so held, the plaintiff becomes rank trespasser in the suit and it cannot be said that she was holding lawful possession in the suit property.

Therefore, the lower appellate Court has rightly held that her suit for injunction simplicitor deserves to be dismissed.

7. In view of this position, there being no substantial question of law involved, I hold that the appeal deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the Civil Application No.1667 of 2004 also stands dismissed with no order as to costs.

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